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9 January 1973

MEMORANDUM FOR: Executive Officer to the Deputy Director
for Support

SUBJECT: Delegation of Authority

1. In 1971 at the request of the Deputy Director for Support, Mr. Brooks undertook a lengthy and difficult project to research the authorities delegated by the Director of Central Intelligence to individuals within the Agency. Mr. Brooks was to report on the current status of these delegations and recommend corrective action where required. In late 1971 Mr. Brooks sent us a rough draft of his report for our comments. Because of his death and the issues involved, we took it upon ourselves to try and finish this report.

2. This Office has devoted many hours of research and writing to the preparation of the attached memoranda. The first, a memorandum for the record, contains a study of the authorities delegated to the Director by Congress in legislation which specifically deals with the Agency and in legislation which generally empowers all heads of Government agencies with certain administrative and managerial authority. The second memorandum sets out the Director's 1 December 1950 (as amended on 18 January 1954) delegation of administrative authorities to the Deputy Director for Support (DDS) and to the directors of certain offices subordinate to the DDS. This memorandum shows that our current headquarters regulations do not contain many of the 1950 delegations. Attached as an annex to the second memorandum is a compilation of the authorities of the Director which have not been delegated by him in specific headquarters regulations. Some of these authorities, however, have been delegated by means of separate memoranda, but they have not been incorporated into the appropriate regulation(s).

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3. The question these papers ask is how and where does the Agency establish a chain of authority from the Director down to those who are actually exercising authority in his behalf. If the 1950 delegation is rescinded, the chain of authority will be broken. We feel that the 1950 delegations should be included in our headquarters regulations, but as the second memorandum and annex indicate, our regulations are not clear in and of themselves. As an interim solution, the Director might delegate an updated version of the authorities in the 1950 memorandum directly to the DDS, giving him the authority to redelegate and making the Director's delegation a part of the [redacted] series. It would seem proper, however, that some consideration be given to a possible restructuring or reorganization of certain of our regulations.

4. As you are aware, our headquarters regulations are the guidelines by which the Agency operates and is managed. We have statements of no less than the United States Supreme Court to the effect that regulations properly promulgated have the effect of law, and that regulations prescribing procedures to be followed are binding upon the administrators who issue them.* While we feel work needs to be done on updating and revising our regulations, this requires a policy decision as to whether it will be done and, if so, how it will be done and who will do it.

5. As you can see this is an enormously complicated matter. We would be happy to discuss it with you in greater detail and assist in any way possible.

S/ John S. Warner
JOHN S. WARNER
Deputy General Counsel

Atts

AEG:ks

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*Service v. Dulles, 354 U.S. 363 (1957); United States ex rel. Accardi v. Sharpe, 347 U.S. 260 (1953).

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18 October 1972

MEMORANDUM FOR THE RECORD

SUBJECT: The Authorities of the Director of Central Intelligence

1. This paper contains a study of the authorities delegated to the Director of Central Intelligence (DCI) by Congress. These authorities are found in legislation which specifically deals with the Central Intelligence Agency (CIA) and in legislation which generally empowers all heads of Government agencies with certain administrative and managerial authority. This paper discusses court decisions and principles of administrative law concerning the delegation and subdelegation of authority and then enumerates the authority delegated to the DCI in specific and general legislation.

I.

2. The best known and probably the most highly regarded treatise on Administrative Law in the United States is by Professor Kenneth C. Davis. This paper borrows liberally from this treatise in sketching out the present state of the law on delegation of authority.

3. Professor Davis begins the chapter on "Delegation of Power" by stating that, "Congress may and does lawfully delegate legislative power to administrative agencies." 1 Davis, Administrative Law § 2.01 at 75 (1958). Davis and other authorities in this field point to the language of a 1940 United States Supreme Court case as reflecting the present state of the law. The language used by the Court in that 1940 case was, "Delegation by Congress has long been recognized as necessary in order that the exertion of

legislative power does not become a futility." Sunshine Anthracite Coal Company v. Adkins, 310 U.S. 381, 398 (1940). Although there were a few United States Supreme Court cases during the 1930's wherein congressional delegations to public authorities were held invalid, the nondelegation doctrine has never carried much weight in federal law. Since 1940, federal courts have upheld congressional delegations of authority based upon the vaguest statutory statements of standards and have even gone so far as to uphold delegations which did not contain any legislative standards. On a few occasions, the United States Supreme Court has even released federal agencies from the standards provided in the statutes. Professor Davis suggests that Congress in its enabling legislation sometimes merely tells a federal agency to do what is in public interest, which is the practical equivalent of saying to it, "Here is the problem. Deal with it." 1 Davis at 82.

4. An examination of the three major pieces of legislation which specifically empower the Director shows that Congress has not chosen to fetter the work of the CIA by imposing strict statutory standards upon it. The three legislative enactments are: The National Security Act of 1947, as amended, 50 U.S.C.A. 402(a), 403, 405; the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C.A. 403a-c, e-h and j; and the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, 50 U.S.C.A. 403 Note. These laws delegate to the Director broad authority to accomplish the duties assigned to the Agency without in all cases either explicitly stating these duties or providing a statutory statement of standards to guide the Director in formulating policies and issuing implementing regulations. Nevertheless, these are valid delegations. As Davis demonstrates, Congress is not required to legislate as far as it reasonably can and delegations are valid without either standards or "intelligible principles." 1 Davis at 88. The United States Supreme Court once justified just such a delegation by saying, "Congress legislated on the subject as far as was reasonably practicable." Butterfield v. Stranahan, 192 U.S. 470, 496 (1940).

5. The National Security Act of 1947, as amended, establishes the National Security Council and, under it, the Central Intelligence Agency with a Director of Central Intelligence as its

head. One of the most important specific authorities given the Director by this Act is the authority to, in his discretion, terminate the employment of any Agency employee whenever "he shall deem such termination necessary or advisable in the interests of the United States..." 50 U.S.C.A. 403(c).* A determination of the "interests of the United States" is left to the Director. The Director also acquires certain authorities by virtue of his position as head of an agency. These authorities are enumerated later in this paper.

6. The National Security Act of 1947, as amended, also provides for the position of a Deputy Director of Central Intelligence, who is authorized to act for and exercise the power of the Director in his absence or disability. 50 U.S.C.A. 403(a). This legislative grant of authority has been interpreted by the Comptroller General of the United States to mean that the Deputy Director may also assist the Director in the performance of his duties, including those vested by law in the Director. 41 Comp. Gen. 429. Therefore, it appears from this that any authority the Director exercises may upon a valid delegation from the Director be exercised by the Deputy Director even when the Director is not absent or disabled.

7. There must be some balance here, however. The Director cannot appear to have simply abrogated all his duties. This Office has taken the position that the Director should not delegate to the Deputy Director at least: (1) the authority under the National Security Act of 1947 to terminate employees of the CIA when the DCI shall deem such termination necessary or advisable in the interests of the United States; and, (2) the authority under the Atomic Weapons Rewards Act of 1955 for the DCI to serve on the Atomic Awards Board, empowered to render awards for information concerning certain activities regarding atomic energy. (There has been no use of this authority since its

*Some duties of the Agency are enumerated at Section 102(d) of the Act. This Act also makes the DCI responsible for protecting intelligence sources and methods from unauthorized disclosure. See 15 OGC 199 (1962).

enactment.) Memo for DDCI fr General Counsel, Subj: Delegations of Authority to Executive Director-Comptroller, OGC 64-3036, dtd 10 July 1964.

8. The language of the National Security Act spells out some of the duties of the Agency in broad terms. The language implies that whatever additional standards may be imposed upon the Agency will be imposed by the National Security Council and that whatever regulations the Agency will operate under will be prescribed by the Director. For example, the Act states that the Agency shall perform "services of common concern" for the benefit of the intelligence community and "other functions and duties...affecting the national security as the National Security Council may from time to time direct." 50 U.S.C.A. 403(d)(4) and (5). Under this broad mandate, the Agency has been assigned duties and tasks by the National Security Council and has provided for their implementation by internal Agency regulations, authenticated by the DCI or the "executive of the Agency" (the Deputy Director for Support), without the sanction or approval of Congress.

9. The next piece of legislation, and perhaps the most important in terms of enumerating the specific authorities the Director may exercise, is the Central Intelligence Agency Act of 1949, as amended. By the language of this Act the Agency is authorized to exercise the authorities contained in section 2(c)(1), (2), (3), (4), (5), (6), (10), (12), (15), (17) and sections 3, 4, 5, 6, and 10 of the Armed Services Procurement Act of 1947, 62 Stat. 21, P.L. 80-413, February 19, 1947. The authority of the Agency is limited to the language of the sections as they read in 1947. Subsequent amendments to these sections are not applicable to the Agency. The Procurement Act of 1947 allows the "agency head" to negotiate purchases and contracts for supplies and services, without advertising, under certain specified conditions. Other sections stipulate procedures with respect to advertising for bids, types of contracts which may be negotiated, advance payments under negotiated contracts, liquidated damages, procurement for other agencies, joint procurement and the delegation of procurement responsibilities by the agency head. "Agency head" is defined in the CIA Act to mean the Director, the Deputy Director, or the Executive of the Agency (the Deputy Director for Support), and the CIA Act emphasizes the

authority of the "agency head" to delegate his powers under the Procurement Act. The CIA Act, however, specifically provides that the power of the "agency head" to make the determinations specified in section 2(c)(12) and (15) and section 5(a) shall not be delegable.** Therefore, only the Director, Deputy Director and Deputy Director for Support can make these decisions.

10. Similar authority, with the exception of procurement for other agencies and joint procurement, is provided for other Government agencies by the Federal Property and Administrative Services Act of 1949, as amended. Procurement authority available to the CIA includes this Act and all subsequent amendments to it.

11. Congress, in the CIA Act of 1949, as amended, also empowered the Director with unique authority in the matter of paying travel, allowances and related expenses of Agency employees assigned to duty stations outside the continental United States. For reasons not pertinent to the discussion here, the Director, utilizing the authority of sections 8(a)(2) and 8(b) of the CIA Act of 1949, as

**2(c) All purchases and contracts for supplies and services shall be made by advertising...except that such purchases and contracts may be negotiated by the agency head without advertising if--

* * *

(12) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

* * *

(15) for supplies or services as to which the agency head determines that the bid prices after advertising thereof are not reasonable or have not been independently arrived at in open competition. Provided, that.... (certain stipulations and conditions be met)

* * *

5(a) The agency head may make advance payments under negotiated contracts heretofore or hereafter executed in any amount not exceeding the contract price upon such terms as the parties shall agree: Provided, that.... (certain stipulations and conditions be met)

amended, approved the principle that the Agency may adopt the administrative authorities (except salary) of the Foreign Service Act, as amended, or of any other laws when it is determined by the Executive Director-Comptroller to be necessary for the proper administration of all employees of the Agency. Memo dtd 23 Aug 67 for DCI fr OGC and OLC, Subject: Legislative and Administrative Authority for Payment of Travel Expenses, Allowances, and Other Fringe Benefits to Agency Employees (OLC 67-0175). The basic principle involved in this adoption is to insure that travel expenses (and other benefits) provided to Agency employees are as favorable as those enacted for other Government employees in similar circumstances. Memo dtd 10 Oct 67 for DDS fr Executive Director-Comptroller, same subject as above (OGC 67-1935). Therefore, Agency foreign travel regulations are substantially similar to the Department of State Foreign Service Travel Regulations. The Director has subdelegated his authority to pay travel, allowances, and related expenses. The authority to approve certain unusual expenses, however, has been vested in the Deputy Directors and in the Heads of the Independent Offices and not further subdelegated.

12. In the payment of travel allowances and related expenses of Agency employees routinely assigned to duty stations within the continental United States, the Agency derives its benefits from the laws and regulations which apply to all other executive departments and follows these regulations, absent an unusual operational need. These regulations, issued by the Office of Management and Budget (OMB), include the Standardized Government Travel Regulations (A-7 /revised/), and the Regulations governing payment of travel and transportation expenses of civilian officers and employees of the United States (A-56 /revised/). With slight modifications, these OMB regulations are part of Agency headquarters regulations.

13. The next subheading of the CIA Act of 1949, as amended, is titled "General Authorities." The actions the Agency may take in the performance of its functions are enumerated here. The Director is mentioned as being the specific individual who authorizes couriers and guards to carry firearms when transporting materials affecting national defense and security, who authorizes rentals of and alterations to rented premises without regard to the limitations on such expenditures set by other legislation, who protects intelligence sources and methods from unauthorized disclosure, and who

(in conjunction with the Attorney General and the Commissioner of Immigration) determines that the entry of a particular alien into the United States for permanent residence is in the interest of national security.

14. The final subpart of the 1949 Act, "Appropriations," specifically requires that the Director establish policies for the transportation of employees and dependents in Government-owned vehicles under certain circumstances (detailed in the Act), and for the attendance of employees at Agency expense at professional meetings. Agency funds may also be spent for supplies, equipment, and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director. Finally, Agency funds may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds, when such expenditures are for objects of a confidential, extraordinary, or emergency nature. These expenditures are accounted for solely on the certificate of the Director.

15. The authority to account for the expenditure of funds as well as the authority to approve the entry of certain aliens into the U.S. for permanent residence was first delegated by the Director to the Deputy Director in about 1962. [redacted]

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[redacted] contains the most recent and much broader delegation of authority to the DDCI. This regulation, dated 1 November 1966, reads as follows:

I hereby delegate to the Deputy Director of Central Intelligence all authorities vested in me by law or by virtue of my position as Director of Central Intelligence and head of the Central Intelligence Agency, including, but not limited to, the certification authority set forth in section 8(b) of the Central Intelligence Agency Act of 1949, as amended, except for any authorities the delegation of which is inconsistent with applicable law.

All other delegations of authority currently in force remain valid to the extent they are not inconsistent with this delegation.

16. This delegation continues in force regardless of changes in the position of the Director and/or Deputy Director. *** Despite this delegation of authority, Agency headquarters regulations continue to state that the Director is the certifying authority [redacted] and the approving authority to effect entry into the United States for certain aliens [redacted]. Since headquarters regulations are the guidelines by which the Agency operates and is managed, it would seem appropriate that specific regulations indicate the person or persons to whom authority has been delegated.

17. It might be worth-while reiterating at this point that the Agency is exempted from a number of laws applicable to other Government agencies, such as the Classification Act. In the case of terminations under section 102(c) of the National Security Act of 1947, the Director is not subject to the Veterans' Preference Act. While subject in normal circumstances to such acts as the Federal Property and Administrative Services Act and the Government Employees' Training Act, both of these acts provide for exemptions to meet Agency needs. Agency employees are also entitled to the benefits of the Federal Employees' Compensation Act and the Federal Employees' Government Life Insurance Act. With both programs, however, the Agency has worked out special arrangements to protect security. The Federal Employees' Health Benefits Act permits the Agency, among others, to conduct its own program. Finally, all reporting requirements on information pertaining to the Agency are lifted by section 6 of the CIA Act of 1949, as amended. 13 OGC 203 (1960).

18. The DCI's authorities under the Agency's Retirement Act of 1964 for Certain Employees are clearly set forth in the Act, as amended, which can be found in the statutes at large and as a note to 50 U.S.C.A. 403. The OGC-produced Guide to CIA Statutes and Law (unclassified) also contains the Act, as amended, and with annotations.

***This Office has suggested that delegations of authority in effect on the date a new Director takes office continue in force even in the absence of a new directive which says they do. 18 OGC 138 (1965).

II.

19. There are also other laws which affect the authority of the DCI in his role as head of the Agency. These laws are not unique to the CIA but empower all heads of government agencies with certain administrative and managerial authority. A close reading of the provisions of these laws shows an overlap between many of them and specific provisions of Agency legislation. The remainder of this paper discusses some of the most important of these laws and the authorities granted to agency heads.

20. Much but not all of the same authority the Agency exercises in the field of procurement can be found in the Federal Property and Administrative Services Act of 1949, as amended. **** In passing this Act, Congress declared that its policy was to create a:

... system for (a) procurement and supply of personal property and non-personal services... such as contracting, inspection, storage, issue, specifications, property identification and classification, transportation and traffic management, establishment of pools of systems for transportation of Government personnel and property by motor vehicle within specific areas, management of public utility services, repairing and converting, establishment of inventory levels, establishment of forms and procedures, and representation before Federal and State

****Federal Property and Administrative Services Act of 1949, as amended.

Title 40, section(s) 471-75 (General Provisions), 481 (Procurement, warehousing, etc.), 483 (Property utilization), 484-92 (Disposal of surplus property and motor vehicle pools and transportation), 512 and 514 (Method for disposal of foreign excess property), 521-24 (Reconstruction Finance Corporation Property), 531-35 (Urban land utilization), 751-59 (General Services Administration).

Title 41, section(s) 5 (Public contracts, advertisements and purchases), 251-55 (Procurement), 257-60 (Administrative determinations, delegations).

Title 44, chapters 21 (Archival administration), 25 (National History Publications Commission), 27 (Federal Records Council), 29 (Records management by Administrator, GSA), 31 (Records management by Federal agencies).

Title 50, appendix sections 1622-41 (Disposal to local governments and non-profit institutions, dispositions outside U.S.).

regulatory boards; (b) the utilization of available property; (c) the disposal of surplus property; and (d) records management. 40 U.S.C.A. 471.

Elsewhere in its general provisions, the Act states that, "Nothing in this Act shall impair or affect any authority of--... (17) the Central Intelligence Agency...." 40 U.S.C.A. 474.

21. For most of the Act, as amended, Congress has provided that the Administrator of the General Services Administration (GSA) will prescribe the policies and methods of procurement and supply or will procure and supply (for example, personal property and non-personal services--40 U.S.C.A. 481(a)) or will prescribe regulations under which certain work may be done (for example, the installation, repair, and replacement of sidewalks around buildings--40 U.S.C.A. 490(i)). The Act also provides for the Administrator to delegate and to authorize successive redelegation of any authority transferred to or vested in him by the Act (with certain restrictions) to the head of any other Government agency or to designate and authorize any executive agency to perform such function(s) for itself. 40 U.S.C.A. 486(d) and (e)(2).

22. Another part of this Act, as amended, is found at Title 41, Chapter 4, "Procurement Procedures." The provisions of this chapter are applicable to purchases and contracts made by GSA or "any other executive agency in conformity with authority to apply such provisions delegated by the Administrator in his discretion." 41 U.S.C.A. 252(a). The agency head is authorized to redelegate the powers delegated to him by the Administrator, GSA except as provided at 41 U.S.C.A. 257(b). 41 U.S.C.A. 257(a).

23. A third part of this 1949 Act which is of importance to the CIA is found at Title 44, Chapter 31. This chapter provides that the head of each federal agency "shall establish and maintain a records management program and 'make and preserve' records of his organization in order to 'protect the legal and financial rights of the Government and of persons directly affected by the agency's activities'." 44 U.S.C.A. 3101 and 3102.

24. With the probable exception of the provisions found at Title 44, Chapter 31, the DCI can, in most cases, only exercise the authority found in the Federal Property and Administrative Services Act, as amended, when the Administrator, GSA has redelegated his authority either to all heads of agencies or specifically to the Director of Central Intelligence.

25. The Administrative Expenses Act of 1946 was benchmark legislation for it relieved heads of Government departments and agencies of the ordinary and routine day-to-day problems associated with the management of personnel under them. This Act represented the first attempt to provide a Government-wide method of dealing with, for example, the expenses of travel of employees, the transportation of dependents, the shipment of an employee's personal and household effects, and the payment of expenses for persons appointed for duty in overseas areas. This Act also permitted the head of a department or agency to delegate to his subordinates the authority to take final action on matters pertaining to the payment of the above mentioned expenses which fall under matters pertaining to the employment, direction and general administration of personnel. The Act also allowed the delegation to subordinates of the authority to publish certain advertisements, notices or proposals in regard to employment or contracts with the department or agency.

26. Subsequent amendments to the original Act broadened the law by increasing the number and type of expenses paid on a Government-wide scale and making final action on these expenses likewise delegable. The Eighty-First Congress provided for the payment of expenses associated with the evacuation of civilian employees and/or their families from posts of duty in foreign countries for military or other reasons, and also provided for the protection of the Government in cases where it paid the expenses of certain civilian employees to posts of duty abroad. Congress also authorized departments and agencies to pay a mileage allowance to civilian employees to cover the cost of transporting house trailers from one official duty station to another in the continental United States.

27. The Eighty-Sixth Congress passed two key amendments to the Administrative Expenses Act. The first broadened the coverage of the existing law relating to the payment of travel and transportation costs of certain new civilian employees and made permanent a program for the payment of travel and moving expenses of certain prospective employees (scientists and engineers) for whom the Civil Service Commission determined that there was a manpower shortage and that their skills were critical to the national security effort. The second amendment, called the Overseas Differential and Allowances Act, established a uniform system of allowances for federal employees in overseas posts, regardless of the agency for which they worked. This legislation, which amended the Foreign Service Act and the CIA Act, extended the benefits then authorized only for foreign affairs agencies to the government in general and established a limited number of new benefits for all. Finally, this legislation established a "special transfer allowance" for extraordinary, necessary and reasonable expenses not otherwise compensated for. Congress later authorized the departments and agencies to pay travel and transportation expenses to student trainees when assigned to positions for which the Civil Service Commission had determined that there was a manpower shortage.

28. The last really major addition to the Act occurred when the Eighty-Ninth Congress provided for the reimbursement of federal employees for certain moving and storage expenses incurred when transferred from one official duty station to another in the interest of the United States (within the United States).

29. The language of the Administrative Expenses Act which allows the department or agency head to delegate routine personnel administration to his subordinates is now found at 5 U.S.C.A. 302 and reads as follows:

In addition to authority to delegate conferred by other law, the head of an agency may delegate to subordinate officials the authority vested in him.

- (1) by law to take final action on matters pertaining to the employment, direction and general administration of personnel under his agency

(2) by (440 U.S.C.A. 324) to authorize publication of advertisements, notices or proposals. 5 U.S.C.A. 302.

30. Congress has also passed other legislation which grants heads of agencies additional authorites to assist them in their administrative and managerial duties. Most of these laws, like much of the Administrative Expenses Act of 1946, have been codified at Title 5. The following discussion touches on some of the more important of the sections of Title 5.

31. An individual appointed to an office of honor or profit in the civil service is required to take an oath of office.

5 U.S.C.A. 331. This oath, which is incident to entrance into the executive branch, may be administered by an employee of an executive agency designated in writing by the head of the agency to administer this or any other oath required by law in connection with this employment. 5 U.S.C.A. 2903(b). All persons accepting employment with the United States Government must file an affidavit stating that his or her employment will not violate 5 U.S.C.A. 7311, which deals with loyalty to the United States Government and with strikes against the Government.

32. Each agency is authorized to employ whatever number of employees of the various classes recognized by chapter 51 of Title 5 as Congress may appropriate for each year. Chapter 51 covers the classification of positions within an agency and although the CIA has been specifically excluded from the Classification Act, the CIA has indicated to the Civil Service Commission that it intended to adhere to this system in substantially the same manner as provided for other agencies. Letter from DCI to Chairman, Civil Service Commission, dated 10 August 1949.

33. There are a number of restrictions on the types of persons the head of an agency may employ. For example, a head of an agency may not employ an attorney to conduct litigation in which the United States or the agency is a party (5 U.S.C.A. 3106), nor may an agency head use appropriated funds to pay the salary of a publicity expert (unless the funds are approved for that purpose) (5 U.S.C.A. 3107), nor may an agency head employ individuals

employed by detective agencies (5 U.S.C.A. 3108). The head of an agency is permitted to employ without pay a reading assistant for a blind employee or to hire and pay clerical assistance for a blind employee. 5 U.S.C.A. 3102(b) and (c). In addition, only the head of the agency concerned may restore to duty an employee suspended or removed in the interest of national security. 5 U.S.C.A. 3571 and 7532.

34. Congress has also provided that the head of each agency "shall establish, operate and maintain" a program or programs for the training of employees by, in and through Government or non-Government facilities. 5 U.S.C.A. 4103. The President has excluded the CIA from certain of the provisions of the Government Employees Training Act, codified at 5 U.S.C.A. 1308 and 4101-4118. Executive Order 10805, February 18, 1959. The Training Act repealed section 4 of the CIA Act of 1949, which authorized a CIA training program. The provisions of the Training Act from which the CIA has been excluded are those which require the CIA to follow the regulations prescribed by the Civil Service Commission, those which impose limits upon the nature or type of training, and those which require an agency to submit reports of its training program(s).

35. Heads of agencies may also establish incentive awards programs, including the payment of cash awards to employees. Each agency head may pay a cash award not to exceed \$5,000 to an employee for an extraordinary act or service or for an invention, suggestion or accomplishment which results in the improvement of Government operations. Awards may also be made to former employees whose act or service was made or performed while in the employ of the Government. 5 U.S.C.A. 4502-03 and 4505.

36. Chapter 53 of Title 5 covers pay rates and pay systems. The salaries of the Director and Deputy Director of Central Intelligence are provided for at sections 5313 and 5314, respectively. The CIA need not adhere to the pay rates set forth in the general schedule (5 U.S.C.A. 5331-38) since this schedule applies only to those employees covered by chapter 51 (classification of positions) and the CIA has been specifically excluded from the provisions of the Classification Act. Here again, however, the CIA has usually

adhered to the pay rates set forth in the general schedule for its staff employees.

37. One of the lengthiest chapters in Title 5 is Chapter 55, dealing with the administration of employees' pay. Subchapters here cover such administrative problems as withholding pay, advancements, allotments and assignments of pay, dual pay and dual employment, premium pay, payment for accumulated and accrued leave, payments to missing employees, settlement of accounts and severance and back pay. There appears to be no specific exclusion from these provisions for the CIA. In several places, however, such as at section 5504(c), the law states that the Civil Service Commission may prescribe regulations necessary for the administration of the subchapter. Generally, the CIA is not required to adhere to the Commission's regulations where they would interfere with or impose undue burdens upon the peculiar operational needs of the Agency.

38. Although the provisions of the Federal Employees' Pay Act of 1945, as amended, apply to all federal employees except those specifically listed in the legislation as exempted, Civil Service Commission regulations have exempted the CIA from the application of the Commission's regulations pertaining to overtime. Federal Personnel Manual, Supp. 990-1, Book III, Sec. 550.101(b)(7). Moreover, under section 8 of the CIA Act of 1949, as amended, the Director of Central Intelligence has the independent authority to pay for personal services without regard to any other law. *****

39. A few additional sections in Chapter 55 are also noteworthy. These sections call for the head of an agency either to make determinations concerning the indebtedness of or an overpayment to an employee or to prescribe regulations to carry out a particular section or sections of Chapter 55. Examples of these authorities can be found at sections 5514 (installment deduction for indebtedness because of erroneous payment), 5522-27 (advances, allotments and assignment of pay), 5543 (compensation time off), 5545 (night, Sunday, standby, irregular and hazardous duty differential), and 5563-67 (payments to missing employees).

*****Contra, Opinion of the Office of General Counsel, CIA, dtd Jan. 6, 1955 by Mr. Feehan; See, Byrnes v. United States, 330 F. 2d 986 (163 Ct. Cl. 167) (1963).

40. The twelve chapters of Title 5 which follow Chapter 55 are concerned with employees' attendance, leave, suitability, conduct, insurance and retirement. Sprinkled through these chapters are numerous references to the authorities of an agency head to establish, develop, or support programs which provide services to or protection for employees. Examples of programs which come within these authorities are the health services and safety programs (sections 7901-02), the Workmen's Compensation Plan, the Civil Service Retirement Program, and the various health insurance programs.

41. The last law to be discussed in this paper concerns the authority of the head of an agency to settle certain employees' claims. In 1964, Congress extended to the heads of other agencies the authority then possessed by the heads of the military departments to settle employees' claims for loss of or damage to personal property when the loss or damage is incident to Government service. This legislation, the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, has been codified at 31 U.S.C.A. 240-243. (This Act repealed 10 U.S.C.A. 2732 and 14 U.S.C.A. 490 and amended 10 U.S.C.A. 2735.) Under section 241(b)(1), subject to such policies as the President may prescribe and such regulations as the head of an agency may prescribe, the agency head or his designee may settle and pay a claim for not more than \$6,500 for loss of or damage to property incident to an employee's Government service. The employee's property may also be replaced in kind. STATINTL



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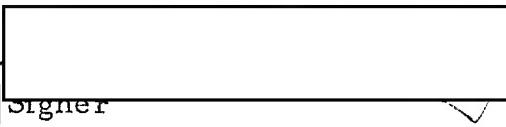
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Delegation of Authority

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